

**MINUTE ENTRY**  
**FALLON, J.**  
**May 27, 2003**

**UNITED STATES DISTRICT COURT**

**EASTERN DISTRICT OF LOUISIANA**

**IN RE: PROPULSID** : **MDL NO. 1355**  
**PRODUCTS LIABILITY LITIGATION** : **SECTION "L"**  
: **JUDGE FALLON**  
..... :

**THIS DOCUMENT RELATES TO ALL CASES:**

A pretrial status conference was held Thursday, May 22, 2003 at 9:00 a.m. in the courtroom of Judge Eldon E. Fallon. In attendance for Plaintiffs were Russ Herman, Leonard Davis, Arnold Levin, Charles Zimmerman, Bob Wright, Robert Blanchard, Julie Jacobs, and Bruce Kingsdorf. In attendance for the Defendants were James Irwin, Thomas Campion, Charles preuss, and Monique Garsaud. At the conference, counsel reported to the Court on the topics set forth in Joint Report No. 23 of Plaintiffs' and Defendants' Liaison Counsel.

1. Update to Rolling Document Production and Electronic Document Production

Plaintiffs' Liaison Counsel ("PLC") advised the Court that it was working with Defense Liaison Counsel ("DLC") to resolve any outstanding issues.

2. State Liaison Counsel

State Liaison Counsel ("SLC") advised the Court that it had nothing to report.

3. Plaintiff Profile Forms and Authorizations

DLC advised the Court that as of May 19, 2003, the defendants had received 2,118 PPFs, 133 are overdue, and 17 will become due within 30 days. DLC indicated that it is preparing a Motion to Dismiss with Prejudice those plaintiffs whose PPFs are overdue. That motion will be set for hearing on the Court's next motion day. The Court noted for the record the PLC's continuing objections to dismissals with prejudice, but indicated that it would again overrule those objections.

4. Service List of Attorneys

DLC provided the Court with an updated list of attorneys in the MDL case as well as related state court cases.

5. Third Party Subpoena Duces Tecum

PLC advised the Court that no problems had been encountered regarding the subpoenas duces tecum issued to Ingenix, McKinsey & Co., and Medicom. PLC noted that one issue remained outstanding as to the subpoena duces tecum issued to Dr. Zipes regarding the production of corporate documents. DLC indicated that it would have the necessary certification within one week. Accordingly, the Court ORDERED DLC to provide PLC with the necessary certification within one week of the date of this Minute Entry.

Regarding the subpoena duces tecum issued to the Degge Group, PLC informed the court that some procedural issues required resolution. The Court advised counsel that the preferred method for handling this issue is for the Degge Group to place the documents in question in a facility of their choosing and allow plaintiffs an opportunity to review the documents and tag those which they wish to copy. The

Degge Group could then review any documents tagged for production, and, if there were any objection to the production of an item, the objecting party should provide the Court with the document and a privilege log. Finally, the Court directed that any copying be undertaken at plaintiffs' expense. PLC indicated that it would provide the Degge Group with a copy of the transcript of this hearing to relay the Court's instructions.

6. Motion for Class Certification

In an Order dated June 27, 2002, this Court indicated that it would in due course set a hearing date in connection with the PSC's second motion for class certification [MDL Document No. 619]. PLC advised that it would convene a meeting of the PSC in June, 2003 to address scheduling dates for a future class certification hearing. PLC would then discuss the issue with the DLC and advise the Court as to a possible plan. The Court advised the parties to focus on the following issues: (1) the potential of a national class; (2) whether this Court has the authority to create individual state classes; and (3) potential Louisiana class actions.

7. Plaintiffs' and Defendants' Respective Requests for Production of Documents

Regarding the Request for Admissions under Federal Rule of Evidence 803, PLC advised the Court that DLC had provided a list of those documents whose admissibility the defendants found objectionable. PLC advised that it was formulating a mechanism to bring the issues to the Court's attention in an efficient manner. The Court advised the parties to provide it with the documents as well as a list of the defendants' objections and the plaintiffs' responses concerning admissibility under the hearsay exception.

As to the discovery of sales force documents, counsel indicated that they were discussing this issue.

As to Norcisapride, the parties were continuing discovery on this matter and would advise the Court whether the motion to compel was still viable. The Court ORDERED the parties to report the status of the motion within one month of the date of this Minute Entry. Finally, the Court ORDERED defendants to produce additional responses to set No. 7 of the Merit Interrogatories within 10 days of the date of this Minute Entry.

8. Trust Account

PLC advised the Court that it would again bring a motion for disbursement of funds for hearing before the Court in the near future.

9. Declassified Documents

The parties advised that they had nothing new to report on this issue.

10. Mediation

Although no mediation sessions are currently scheduled, PLC and DLC advised the Court that they would confer regarding possible dates for mediations in June. DLC advised that the defendants were continuing to review the settlement brochures submitted by plaintiffs for mediation.

12. Trial of Louisiana Cases

The Court indicated its desire to set trials of Louisiana cases in the months of October, November, or December, 2003. The Court further stated that it would look to counsel to determine which cases were ready to trial. If counsel is unable to agree on those cases, the Court will choose which cases to set for trial. The Court ORDERED the parties to discuss these issues and report to the Court no later than June 13, 2003. The Court instructed defendants to contact the Court with a list of cases and lawyers ready for trial. The Court will then convene a status conference for the purpose of selecting trial and cut-off dates.

13. End Game Planning Committee

The Court noted that it had held meetings with the end game planning committee and would look for further recommendations from that committee at the next status conference.

15. Bart/ Gallagher Motions to Withdraw

The Court indicated that it would deny this motion until substitute counsel is found for these plaintiffs. This matter was covered by the Court's Minute Entry dated May 22, 2003.

16. Application of the Daubert Ruling to Other Plaintiffs

PLC and DLC advised the Court that they were discussing this issue.

17. Motion to Withdraw in the Matter of Donald Anderson, Civil Action 02-3518

This matter was covered in the Court's Minute Entry dated May 22, 2003.

18. Scheduling of Next Pretrial Status Conference

The next pretrial status conference will be held on Thursday, June 26, 2003 at 9:00 a.m.